(2)

Supreme Court, U.S.
FILED

No. 03-1480 APR 12 2004

IN THE SUPREME COURT OF THE UNITED STATES

MONTGOMERY BLAIR SIBLEY,

Petitioner,

vs.

BARBARA SIBLEY,

Respondent.

On Petition for Writ of Certiorari to the Florida Third District Court of Appeal

Appendix to Petition for Writ of Certiorari

Montgomery Blair Sibley
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CONTENTS OF APPENDIX

Opinions Below

The May 14, 1998, order permitting Father to relocate from Florida with his minor children of the Florida Circuit Court in and for Miami-Dade County, Florida *Appendix-4*

The December 10, 2001, order of the Florida Circuit Court in and for Miami-Dade County, Florida on temporary custody . . . . . *Appendix -6*

The March 27, 200, opinion of the Florida Third District Court of Appeals *Appendix-13*

The August 5, 2003, order of the Florida Circuit Court in and for Miami-Dade County, Florida on child support *Appendix-15*

The August 5, 2002, order of the Florida Circuit Court in and for Miami-Dade County, Florida on educational support *Appendix-23*

The August 9, 2003, order of the Florida Circuit Court in and for Miami-Dade County, Florida on permanent custody *Appendix-28*

The October 23, 2003, opinion of the United States Court of Appeals for the Eleventh Circuit in *Sibley v. Anstead* *Appendix-35*

The December 3, 2003, opinion of the Florida Third District Court of Appeals *Appendix-40*

The February 12, 2004, opinion of the Florida Third District Court of Appeals *Appendix-41*

The February 20, 2004, opinion of the United States Court of

Appeals for the Eleventh Circuit in *Montgomery Blair Sibley, a father representing a minor, Alexander Blair Sibley v. Lando* *Appendix-42*

Constitutional Provisions, Treaties, Statutes, Ordinances and Regulations Involved

U.S. Constitution, 14th Amendment, Section 1 . . *Appendix-45*

U.S. Constitution, Article, VI, Clause 2 . . . . . *Appendix-45*

Florida Statute, §61.16 . . . . . *Appendix-45*

Florida Statute §61.30(12) *Appendix-45*

Rule 14(g)(i) Statement

I. The Florida Family Court Proceedings Violated Father's Procedural Due Process Guarantees *Appendix-46*

A. Delay in Conducting Change in Custody Proceedings Violates Due Process *Appendix-47*

B. Judge Lando Improperly Limited Father's Presentation of Evidence *Appendix-48*

C. Judge Lando Abdicated Her Responsibility By Her Verbatim Entry of the Proposed Orders from Mother's Counsel *Appendix-49*

D. Judge Lando's Termination of Father's Parental Rights Violated Father's Fundamental and Due Process Rights *Appendix-49*

E. Lack of Notice to Father of the Expansion of the Hearings Beyond the July 27, 2000 Allegations

Violated Father's Due Process Rights
. . . . . *Appendix-50*

F. Judge Lando Utilized Stale Evidence Which Caused Her To Mis-Recollect the Testimony
. . . . . *Appendix-51*

G. The Bias of Judge Lando Against Father Violated Father's Due Process Rights *Appendix-51*

H. Florida Public Policy Requires Attorney Fees and Costs To Be Borne By Mother . . . *Appendix-52*

II. The Florida Family Court Proceedings Violated Father's Substantive Due Process Guarantees
. . . . . *Appendix-53*

III. Father's Support Obligation Offends Equal Protection
. . . . . *Appendix-53*

IV. Father's Support Obligations Violate Due Process
. . . . . *Appendix-53*

V. Father was Improperly Prohibited From Suing in Other Courts and Was Improperly Sanctioned . *Appendix-54*

VI. The Florida Supreme Court and the Third District Court of Appeals Violated Father's Equal Protection Rights
. . . . . *Appendix-55*

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO. 94-18177 FC 19

IN RE: The Marriage of
BARBARA SIBLEY
Petitioner,
and
MONTGOMERY BLAIR SIBLEY
Respondent.

AGREED ORDER PROHIBITING THE FORMER HUSBAND FROM REMOVING THE MINOR CHILDREN FROM THEIR RESIDENCE IN DADE COUNTY WITHOUT ORDER OF COURT

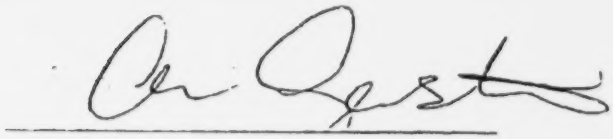
THIS CAUSE coming on before the Court upon the agreement of the parties to the entry of this order, and the Court being fully advised, it is thereby

ORDERED AND ADJUDGED as follows:

1. This order is without prejudice to either party as to any substantive issues in connection with any possible relocation.

2. The Former Husband shall not remove the permanent residence of the minor children from Dade County, Florida without providing to the Former Wife, in writing, at least forty-five days in advance of any contemplated move, his intention to relocate and relocation plans. This shall provide the Former Wife with the opportunity to file any motions she deems appropriate with the court.

DONE AND ORDERED in Chambers, at Miami, Dade County, Florida, this day of 14 day of May, 1998.



CIRCUIT COURT JUDGE

cc: Bette Ellen Quiat, Esq., 8525 SW 92 St., Ste. B-5, Miami, FL 33156
Montgomery Blair Sibley, pro se, 1234 S. Dixie Highway, Suite 340, Coral Gables, FL 33146

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO. 94-18177 FC 19

IN RE: The Marriage of
BARBARA SIBLEY
Petitioner,
and
MONTGOMERY BLAIR SIBLEY
Respondent.

ORDER GRANTING FORMER WIFE'S EMERGENCY MOTION FOR TEMPORARY PRIMARY PHYSICAL RESIDENCE OF THE MINOR CHILDREN AND TO ALLOW MINOR CHILDREN TO BE ENROLLED IN PRIVATE SCHOOL AND PROHIBITING THE REMOVAL OF THE CHILDREN TO WASHINGTON, D.C. AND DENYING RESPONDENT'S EMERGENCY MOTION FOR CONTEMPT AND ENFORCEMENT AND TO MODIFY VISITATION SCHEDULE

THIS MATTER coming on to be heard on September 24 and 25, 2001 and October 8, 2001, upon the former wife's Emergency Motion for Temporary Primary Physical Residence of the Minor Children and to Allow Minor Children to be Enrolled in Private School and Prohibiting the Removal of the Children to Washington,. D.C., and Respondent's Emergency Motion for Contempt and Enforcement and to modify visitation schedule, and the Court having heard testimony, argument and being duly advised in the premises, finds as follows:

A. This matter has had a significant amount of motions and activity before the Court and the Court has had the

opportunity at length to observe the demeanor of the parties, to intimately review their actions and their words to each other and to their children through testimony and through written correspondence introduced as evidence.

B. The Court has reviewed the lengthy correspondence between the parties, prior orders and all of the evidence submitted in this matter.

C. This Court has been in the unique position of observing not only the context of the words spoken during testimony, buy. the demeanor and behavior of the parties.

D. The Former Husband may have had a relationship with the minor children in the past, but his actions and words since his remarriage and birth of his son, SASHA, have continuously negatively escalated to the point where it would be detrimental for the children to be with their father.

E. The Court has heard testimony of the children being physically hit.

F. Emotionally, the children have been devastated by the Former Husband's behavior such as keeping the children homo from school as punishment, using the children as indentured servants to babysit his new child, failing to have any contact whatsoever with the children for months at a time, and economically depriving the children of necessities and interfering with their education.

G. The Court has had the unique opportunity to view the correspondence between the parties. The Former Husband's attempt to gain financial concessions from the Former Wife in exchange for a Court order confirming the primary physical residence of the children to the Former Wife reveals a deliberate attempt to "sell" the children to the Former Wife for the Former Husband's own economic benefit.

H. The Former Husband has shown preferential treatment to his new child, SASHA, economically, emotionally and in every way possible to the detriment of the children of this marriage.

I. The court has listened to the recommendations of the Guardian Ad Litem in this matter. The Court selected Dirk Lorenzen as a Guardian Ad Litem because of his qualifications as a psychologist, although not licensed to practice in the State of Florida, and his human ability to bond with children of this age. The Guardian Ad Litem has done a thorough and complete job in reviewing .his matter and making his recommendations.

J. The Former Wife has done everything she could to foster a relationship between the Former Husband and the minor children. She sent flowers on behalf of the children to the Former Husband's new wife at the time of their marriage, purchased gifts for the Former Husband, his new child and new wife, kept the Former Husband informed of all activities of the children, and ultimately made sure that the children went on the Christmas visitation in 2000 despite monumental resistance from the children. The Former Wife's behavior has been positive and encouraging to the children despite the Former Husband's actions.

K. During Christmas, 2000, this Court ordered the children to visit with their father in the hope of repairing the relationship. The visitation not only failed to repair their relationship, it destroyed any hope that the Former Husband could have a relationship with his children. As soon as the children got off the plane and arrived at the Former Husband"s residence, they were made to sit down and write numerous letters to their father describing each month's activities during which they had not seen him. They were ignored for Christmas and did not receive any gifts, although the Former Husband claimed that their plane flight wars their gift. Although it was

LIZA's birthday on December 26th, she did not receive a gift, although the Former "Husband claimed that her plane flight was hor Christmas and birthday gift. On the other hand, it was SASHA's birthday during the childrens visit, and they watched as SASHA opened presents and enjoyed a celebration for his birthday.

L. The Former Husband has put his new wife before his children. on an occasion where the Former Husband was to visit with LIZA at boarding school, he canceled the visitation because SASHA was ill and would not visit without SASHA and his new wife accompanying him to visit LIZA.

M. The Former Husband has divested himself of funds in order not to pay child support.

N. The Former Husband delivered all of the children's belonging to the Former wife prior to his leaving Miami. This Court believes that the parties as well as the children had a clear understanding that the children would remain with the Former Wife as the Former Husband departed to Washington, D.C. with his new wife and child. The Former Husband obtained a one-bedroom apartment upon his relocation to Washington, D.C. which this Court finds supports the understanding of the parties that the children would remain with the Former Wife.

0. What is clear to this Court is that this case is about money. It is about MONTGOMERY BLAIR SIBLEY not wanting to face a court determination for spending his childrens trust money and not wanting to pay child support. The Former Husband has even manipulated his owes father into not paying the tuition of the children and jeopardizing their educations.

P. The Former Husband has failed to furnish the former wife with insurance cards for the minor children's health

came.

Q. The minor child, MONTGOMERY BLAIR SIBLEY, has threatened to run away if he is required to visit with his father.

R. Both children are in fear of their father.

S. The Court heard the testimony of the minor child, ELIZABETH MASON SIBLEY, and observed her demeanor and visible and palpable fear and dread towards her father.

T. The Former Husband has used his funds to provide schooling for SASHA and schooling for his new wife despite the Final Judgment which requires him to provide funds for the children of this marriage's education.

U. The Former Wife discussed and communicated the desire of the minor child, ELIZABETH MASON SIBLEY, to attend Madeira school which the parties' oldest child, MARGARET, had attended and graduated, The correspondence between the parties indicates the Former Husband's assent conditioned on the Former Wife's agreeing to other issues for his economic benefit. The child has been attending Madeira School and has been doing well.

V. The Court £rode there has been a substantial change of circumstances sufficient. to require the granting of. the motion.

THEREFORE, IT IS ORDERED AND ADJUDGED:

1. That the Former Wife's Emergency Motion for Temporary Primary Physical Residence of the Minor Children and to Allow Minor children to be Enrolled in Private School and Prohibiting the Removal of the Children to Washington, D.C. is hereby GRANTED.

2. The Former Husband shall immediately furnish to the Former Wife insurance cards for the children.

3. The Former Husband's Emergency Motion for Contempt and Enforcement and to Modify Visitation Schedule is hereby DENIED.

4. No visitation shall take place between the Former Husband and the minor children until therapy takes place.

5. All testimony taken in this hearing shall be adopted and made a part of the hearing on the Former Wife's Petition for Modification of Primary Physical Residence.

6. The Court reserves jurisdiction to, consider further recommendations of the Guardian Ad Litem as to the specific type of therapy which should occur prior to any visitation taking place.

7. The minor child, ELIZABETH MASON SIBLEY, shall be enrolled at Madeira School for this school year.

8. The Court reserves jurisdiction on the Former Wife's request for attorney's fees and costs.

DONE AND ORDERED in Chambers, at Miami, Miami-Dade County, Florida, this 10 day of December, 2001.

CIRCUIT COURT JUDGE

Copies furnished to:

Bette Ellen Quiat, Esq., 8525 SW 92nd Street, Suite B-5, Miami, FL 33156
Montgomery Blair Sibley, 14512 Lee Road, Suite H, Chantilly, VA 20151
Dirk Lorenzen, Esq., 44 West Flagler Street, Suite 1000, Miami, FL 33130

IN THE DISTRICT COURT OF APPEAL OP FLORIDA THIRD DISTRICT

CASE NO.:3D01-2173
LOWER TRIBUNAL NO. 94-18177

MONTGOMERY BLAIR SIBLEY, SR.,
in his individual capacity and as
Trustee of the Minor Children's Trusts,

Appellant,

v.

BARBARA SIBLEY,

Appellee.
_____/

Opinion filed March 27, 2002

An appeal from the Circuit Court for Miami-Dade County, Maxine Cohen Lando, Judge.

Montgomery Blair Sibley (Virginia), for appellant.

Bette E. Quiat; Jay M. Levy, for appellee.

Before GREEN and SHEVIN, JJ. and NESBITT, Senior Judge.

PER CURIAM.

We affirm the trial court's order compelling the father to pay for his daughter's college education expenses pursuant to the terms of the parties' marital settlement agreement. Our affirmance, however, is without prejudice for the father to pursue modification of their agreement with the lower court based

upon his current ability to pay for such expenses. We, of course, express no opinion as to the merits of any claim for modification at this juncture.

Affirmed as modified.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO. 94-18177 FC 19

IN RE: The Marriage of
BARBARA SIBLEY
Petitioner,
and
MONTGOMERY BLAIR SIBLEY
Respondent.

ORDER GRANTING PETITIONER'S EMERGENCY MOTION FOR CONTEMPT FOR FAILURE TO PAY EDUCATIONAL EXPENSES OF THE CHILDREN AND PETITIONER'S SECOND EMERGENCY MOTION FOR CONTEMPT FOR FAILURE TO PAY EDUCATIONAL EXPENSES OF THE CHILDREN DATED APRIL 17, 2002

THIS MATTER having come on to be heard on June 4,-5, 6 and 7, 2002 and July 1, 2002 upon the Petitioner's Emergency Motion for Contempt for Failure to Pay Educational Expenses and Petitioner's Second Emergency Motion for Contempt for Failure to Pay Educational Expenses of the Children dated April 17, 2002, and the Court having heard testimony, argument of counsel and duly advised in the premises finds as follows:

A A Final Judgment of Dissolution of Marriage was entered on September 20, 1994 adopting and incorporating the Marital Settlement Agreement dated September 20, 1994.

B. Pursuant to the Final Judgment and Marital Settlement Agreement, paragraph 6 provides as follows:

Husband shall be responsible for, pay for and/or arrange to pay for all education expenses of the children while and until they achieve a college degree. The support herein shall include direct and incidental expenses of education, such as tuition, clothing, housing (while at school and away from their primary residence), books, activity fees, dues and any other education related expenses. Husband shall also provide funds for one trip home and one back to school each year at the end and beginning of each school year for any child attending school away from the primary residence. Pocket and spending money shall be provided to the children during each school year by the parties on a 50/50 basis in an amount to be mutually determined per semester between the parties.

C. The Former Husband has failed to pay the children's educational expenses for the years 2000-2001 and 2001-2002 as follows and as set forth in the Petitioner's Exhibit "F" of June 6, 2002:

1. For MARGARET HARPER SIBLEY: $44,925.00 by BARBARA SIBLEY; and $16,870.00 by the trust with an additional $16,205.00 paid by the trust for the Fall 2002 semester. By separate Order BARBARA SIBLEY has been reimbursed $500.00 for the 3/8/02 deposit to Wake Forest by the trust leaving a payment of $44,425.00 by BARBARA SIBLEY and $17,370.00.by the trust:

2. For ELIZABETH MASON SIBLEY: $48,045.36 by BARBARA SIBLEY; and $10,500.00 from the trust.

3. For MONTGOMERY BLAIR SIBLEY, JR.: $38,320.95 by BARBARA SIBLEY for which $10,500.00 was reimbursed to her by the trust leaving a balance due of $27,820.95.

D. Paragraph 18 of the Marital Settlement Agreement incorporated in the Final judgment provides:

> It is anticipated that the children will each receive the sum of $100,000.00 (One Hundred Thousand Dollars) from the estate of the husband's mother. Husband shall do all things necessary and within his ability to foster and bring about the occurrence of this expectation. The husband and the wife shall be the trustees unless otherwise designated by the estate or testator for any such inheritance, transfer or gifts received by the children and as provided by law.

E. Additionally, paragraph 19 provides:

> For and in consideration of all the above recited obligations assumed by husband, wife hereby waives all rights to alimony and support for herself from husband. Both parties waive any right to support, alimony (lump sum or periodic) and any other claim or payment from the other on account of the dissolution of marriage except as recited herein. However, this waiver is conditioned on full compliance by the husband of all terms, conditions, and obligations for the benefit of wife and children contained herein. In the event the husband does not comply with both the intent of and the stated provisions of this Agreement then the wife's waiver of alimony is void and the Court

shall retain jurisdiction for the determination of any alimony award to the wife and any other determination by the Court.

F. From the date of the entry of the Final Judgment until approximately April, 2000, all three children were in private school which was paid for by the paternal grandfather.

G. The paternal grandfather testified that he continues to pay the private school expenses, including college expenses, of all of his other grandchildren except the children of this marriage and one other grandchild. The paternal grandfather testified that he ceased paying the tuition because he believed that affording the private school to the minor children was assisting BARBARA SIBLEY who would otherwise have to pay the tuition of the children. It is clear that the paternal grandfather is being advised by the Former Husband not to pay the expenses of the children. Also, it is equally clear that the Former Husband has been set up in business and financed by the paternal grandfather, provided a home by the paternal grandfather, and may count on the paternal grandfather for regular gifts of large sums of money.

H. The Court has reviewed correspondence between the Former Husband and the Former Wife. The Former Husband, in writing, has held a deposit furnished to him by the paternal grandfather for their son's private school education, and refused to provide it to the educational institution. The Former Wife had to then furnish the deposit.

The paternal grandfather testified that the Former Husband, MONTGOMERY BLAIR SIBLEY, had never requested funds for the payment of the children's private school expenses after he ceased paying these expenses in the year 2000.

I. The Former Husband began post-divorce

litigation with the Former Wife in 1997. A plethora of petitions and motions were filed ultimately culminating in this Court's Order on All Pending Motions dated March 26, 1999. The Former Husband filed an appeal from said order and the parties thereafter entered into two stipulations styled Stipulation of Settlement between Barbara Sibley, Montgomery Blair Sibley and Guardian Ad Litem and Stipulation of Settlement between Barbara Sibley and Montgomery Blair Sibley which stipulations were approved by Order of this Court dated February 17, 2000.

J. Both stipulations of settlement specifically provided that except as modified in each stipulation, all provisions of the Marital Settlement Agreement and Final Judgment and Order on all pending motions dated March 26, 1999 shall remain in full force and effect.

K. In the Stipulation of Settlement between Barbara Sibley and Montgomery Blair Sibley, the parties waived each child's interest (in the amount of $20,100.00 or any amount due) from the inheritance left to MONTGOMERY BLAIR SIBLEY by his mother, Beatrice Blair, and any accounting. Thus, MONTGOMERY BLAIR SIBLEY was not required to pay to each minor child the sum of $20,100.00 which had been ordered to be paid by the Court. This provided the Former Husband with an additional $60,300.00. The parties' stipulations provided that one of the primary reasons for entering into them was concluding the litigation between the Former Husband and the Former Wife and that both parents believed this to be in the best interest of the children.

L. Having received the benefit of the Stipulation which was confirmed by Order dated February 17, 2000, the Former Husband thereafter immediately ceased to pay for and/or arrange to pay for all of the education expenses of the children pursuant to paragraph 6 of the Marital Settlement Agreement.

M. The Court finds that the Former Husband's

actions were willful, wanton and in direct violation of the Final Judgment.

N. The Former Husband has not only failed to pay for and/or arrange to pay for all education expenses of the children as provided in paragraph 6, but has intentionally and maliciously either caused the paternal grandfather's funds, such as the deposit, not to be provided for the benefit of the minor children, interfered and/or failed to ask the paternal grandfather for the educational expenses.

O. The Former Husband has arranged for his son (of his current marriage), Sasha's private daycare/school expenses to be paid by the paternal grandfather.

P. The Former Husband has arranged for the paternal grandfather to purchase a new home in which the Former Husband, his current wife and minor son, Sasha, reside.

Q. The Former Husband has been able to arrange for the paternal grandfather to purchase a business in which the Former Husband is employed.

R. The Former Wife has taken the position that the Marital Settlement Agreement permits the children's trusts to pay for the children's educations.

S. The Former Husband and the Guardian Ad Litem have taken the positions that the trusts should not pay for the children's private school tattiness. The reasons of the Guardian Ad Litem and Former Husband as to why this should not be done are different.

T. The Court finds that there is nothing which prohibits the children's trusts from paying for their education. The Court's finding is based, in part, on the Former Husband's written documentation to the Former Wife which has been

introduced in evidence and which shows his state of mind as to his opinion as to the use of the trusts. See Petitioner's Exhibit "B" of 6/5/02 and Respondent's Exhibits "A" and "C" of 6/4/02.

U. The Court finds that the Former Husband has at all times had the ability to pay the children's educational costs directly and/or to arrange to pay for the children's educational costs. He has deliberately divested himself of assets that could be used to meet these expenses, such as the family silver, which lie gave as a "gift" to his present wife, and other items of value, and family heirlooms, which he has given away with no compensation,. in order to attempt to place himself in a position wherein he could plead poverty to the Court. However, the Court notes all of the above and rejects Mr. Sibley's arguments as to his
perceived inability to pay or arrange to pay his responsibilities to his children in an equal fashion to the treatment of his youngest child.

Based upon the foregoing it is ORDERED AND ADJUDGED as follows:

1. The Former Husband, MONTGOMERY BLAIR SIBLEY, is in contempt of Court and the Final Judgment of Dissolution of Marriage for failure to be responsible for, pay for and/or arrange to pay for the college expenses of the children while and until the achieve a college degree.

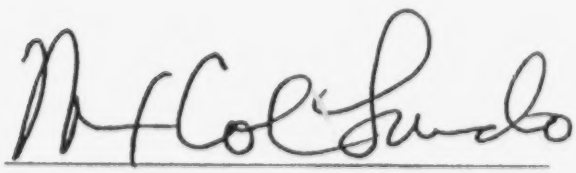
2 The Former Husband is hereby sentenced to ninety (90) days in the Dade County jail beginning November 1, 2002.

3 The Former Husband may purge himself of said contempt by payment of reimbursement to the Former Wife as and for reimbursement of educational expenses the sum of $120,291.31 and to the children's trusts the sum of $54,575.00 (which shall be applied and returned to each child's trust in accordance with disbursements made) within sixty (60) days of

the date of this Order. The Court shall consider any motion filed by the Former Husband within thirty (30) days to permit the trusts to reimburse the Former Wife all or a portion of the amount due, and to permit the trusts to pay all or a portion of the past and future educational expenses of the minor children together with a proposal by the Former Husband to repay the trusts any shortfall due to the trusts for principal or interest under a payment plan.

4. The Former Wife and Guardian Ad Litem/Attorney Ad Litem are entitled to attorney's fees and costs in connection with the making of this motion pursuant to paragraph 26 of the Marital Settlement Agreement. The Court reserves jurisdiction as to the amount of the attorney's fees and costs to be awarded.

DONE AND ORDERED in Chambers, at Miami, Miami-Dade County, Florida, this day of 5th of August, 2002.



CIRCUIT COURT JUDGE

Copies furnished to:

Bette Ellen Quiat, Esq., 8525 SW 92nd Street, Suite B-5, Miami, FL 33156
Montgomery Blair Sibley, 14512 Lee Road, Suite H, Chantilly, VA 20151
Dirk Lorenzen, Esq., 44 West Flagler Street, Suite 1000, Miami, FL 33130

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO. 94-18177 FC 19

IN RE: The Marriage of
BARBARA SIBLEY
Petitioner,
and
MONTGOMERY BLAIR SIBLEY
Respondent.

ORDER ON FORMER WIFE'S MOTION FOR CONTEMPT FOR FAILURE TO PAY CHILD SUPPORT DATED JANUARY 10, 2002 AND FORMER WIFE'S AMENDED MOTION FOR CONTEMPT FOR FAILURE TO PAY CHILD SUPPORT DATED APRIL 17,2002

THIS MATTER having come on to be heard on June 4, 5, 6, and 7, 2002 and July 1, 2002 upon the Former Wife's Motion for Contempt for Failure to Pay Child Support dated January 10, 2002 and Former Wife's Amended Motion for Contempt for Failure to Pay Child Support dated April 17, 2002, together with other motions, the Court finds as follows:

A. The parties were divorced by Final Judgment of Dissolution of Marriage entered on September 20, 1994 which incorporated the Marital Settlement Agreement of the parties dated September 20, 1994.

B. Pursuant to the Marital Settlement and Final judgment, paragraph 12, if the minor children's primary physical residence is with the Mother, and the Father should

move out of the South Florida area so that the Husband cannot share in the day-to-daycare and parenting of the children, the Former Husband was to pay to the Former Wife not less than the sum of $4,000.00 per month for all three (3) children (or divided into thirds one-third for each child) until the completion of their individual college educations, as child support in addition to all of the Former Husband's other obligations set forth in the Marital Settlement Agreement.

C. The Former Husband voluntarily chose to move out of the South Florida area in May, 2000, and has not shared in the day-to-day care and parenting of the children since said date.

D. The Former Husband has not furnished any child support to the Former Wife since May, 2000.

E. The Former Husband is in arrears in child support in the amount of $4,000.00 a month for twenty-five (25) months during which he has not been in South Florida and the children's primary physical residence has been with the Former Wife.

F. The Court has reviewed the Former Husband's initial Financial Affidavit filed September 20, 1994 which reflects a gross income of $4,600.00 and a net income of $3,460.00 per month. It states monthly expenses of $9,232.00 per month. The Husband has filed subsequent affidavits in these proceedings including an affidavit dated June 10, 1999 showing a net income of $2,918.00 per month, living expenses of $5,351.00 per month and a negative net worth of $121,900.00. The Former Husband's supplemental financial affidavit filed on
October 19, 1995 shows a net income of negative $1,435.00 per month, monthly expenses of $6,000.00 per month and a negative net worth of $57,400.00.

The Former Husband testified that his present gross income was $37,500.00 annually from his employment (business owned by his father), and that his current wife's gross income was also in excess of $30,000.00. Additionally, the Former Husband continues to practice law and has taken in retainers of more than $17,000.00 so far this year. The Former Husband has not produced one check or bank statement. Instead he has produced computer generated ledger sheets allegedly from Alodus Corporation, no paycheck stubs for hint or his wife, no credit card statements, no bank statements or tax returns.

G. The Former Husband is currently living in a home his father recently purchased and testified he is paying rent to his father of $2,500.00 per month which the Court notes, at times, has been paid by the corporation as shown on the Former Husband's Notice of Filing Documents dated June 24, 2002. He runs a company purchased by his father. The Former Husband has the use of a company credit card, for which he has refused to supply statements. The company has paid filing fees and costs in this proceeding. The company has paid rental cars for the Former Husband when lie comes to Miami for hearings. His father furnishes him an apartment in Coconut Grove when he comes to Miami. His wife drives a BMW. His child, Sasha, is in private day care/school. His wife saves money for Sasha's future education.

H. The $200,000.00 loan from his father, Hai-per Sibley, listed on the Former Husband's June 10, 1999 Financial Affidavit has been satisfied and no longer exists.

I. The Former Husband claims he has given the sterling silver he received in the dissolution, which was valued at $15,900.00 according to the Memorandum of Understanding previously filed in the case, to his current wife.

J. Despite showing deficits of

$50,000.00-$100,000.00 annually to live, the Former Husband has no debt other than the court-ordered judgments arising out of litigation with his Former Wife.

K. The Former Husband has not demonstrated any substantial change in circumstances in his income or lifestyle from the time he entered into the Marital Settlement Agreement to the present time.

L. The Former Husband's ability to pay the child support agreed to by him at the time of the Marital Settlement Agreement and subsequently ratified and approved by him in the Stipulation of Settlement between Barbara Sibley and Montgomery Blair Sibley which incorporated all prior orders ratified by Court Order dated February 17, 2000 has not substantially changed and he has and has had the ability to pay said support.

WHEREFORE, IT IS ORDERED AND ADJUDGED as follows:

1. The Former Husband, MONTGOMERY BLAIR SIBLEY, is in contempt of this Court for failure to pay child support of $4,000.00 per month for 25 months pursuant to the Final Judgment.

2. The Former Husband owes to the Former Wife the sum of $100,000.00 as and for past due child support.

3. The Former Husband at all times from May, 2000 had the present financial ability to pay but wilfully or intentionally failed and refused to do so and wilfully violated the Order of this Court.

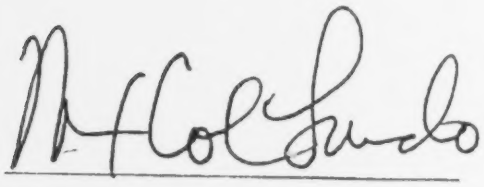
4. The Former Husband is hereby sentenced to ninety (90) days in the Dade County jail beginning January 1, 2003, unless prior to that time the Former Husband chooses to purge himself of contempt as follows:

a. Payment to the Former Wife of the sum of $30,000.00 on October 1, 2002, $30,000.00 on November 1, 2002 and $40,000.00 on December l, 2002, and remaining current in his child support of $4,000.00 per Month.

5. Any Petition for Modification filed by the Former Husband is denied.

6. The Former Wife is entitled to attorney's fees and costs. The Court reserves jurisdiction as to the amount.

DONE AND ORDERED in Chambers, at Miami, Miami-Dade County, Florida, this 5th day of August, 2002.



CIRCUIT COURT JUDGE

Copies furnished to:

Bette Ellen Quiat, Esq., 8525 SW 92nd Street, Suite B-5, Miami, FL 33156
Montgomery Blair Sibley, 14512 Lee Road, Suite H, Chantilly, VA 20151
Dirk Lorenzen, Esq., 44 West Flagler Street, Suite 1000, Miami, FL 33130

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO. 94-18177 FC 19

IN RE: The Marriage of
BARBARA SIBLEY
Petitioner,
and
MONTGOMERY BLAIR SIBLEY
Respondent.

ORDER GRANTING PETITION FOR MODIFICATION OF PRIMARY PHYSICAL RESIDENCE, AND DESIGNATION OF SOLE RESPONSIBILITY AS TO THE MINOR CHILDREN, ELIZABETH MASON SIBLEY AND MONTGOMERY BLAIR SIBLEY, JR., AND ENFORCEMENT OF THE FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE

THIS MATTER coming on to be heard on June 4, 5, 6 and 7, 2002 and,July'1, 2002 upon the Petition for Modification of Primary Physical Residence, and Designation of Sole Responsibility as to the Minor Children, ELIZABETH MASON SIBLEY and MONTGOMERY BLAIR SIBLEY, JR., and Enforcement of the Final Judgment of Dissolution of Marriage, and the Court having heard the report and recommendation of the Guardian ad Litem, and having had the opportunity to listen to the testimony and view the demeanor of the witnesses, and heard the argument of counsel, and in addition having taken judicial notice of the prior orders of the Court in this case, finds as follows:

The parties have extensively litigated the custody of the

two minor children, ELIZABETH MASON SIBLEY (Liza) and MONTGOMERY BLAIR SIBLEY, JR. (Monty). The parties entered into a Marital Settlement Agreement, which was incorporated into the Final Judgment. Pursuant to this agreement, "the father's residence shall be the primary physical residence of the children. The father's residence shall be in the vicinity of the children's private schools."

The father left South Florida in May, 2000, leaving the children with the mother and without notice. The evidence demonstrates that it was the father's intent to have the children make their primary residence with the Former Wife when he moved to Washington. Based on the evidence, the father attempted to use custody of the children as a bargaining chip to relieve himself of the financial obligations he bargained for in the Marital Settlement Agreement.

Additionally, the Marital Settlement Agreement provides for the father's relocation out of the State of Florida.

> If the minor children's primary physical residence is with the mother and the father should move out of the South Florida area, so that husband cannot share in the day to day care of the children, husband shall pay to the wife not less than the sum of $4,000 per month for all three children (or divided into third (1/3) for each child until the completion of their individual college educations) as child support in addition to all of husband's other obligations herein recited. Regardless of any other provision herein the. support paid (or value thereof) by husband shall not be less in value than set forth in the guidelines.

As there was a Marital Settlement Agreement, the first issue the court should address in determining custody of these

children is whether the Agreement of the parties addressed the issue. The court finds that the clauses noted above clearly reflect the intention of the parties. The Court finds that the original intent of the parties was that the children would reside with the father,, who would live near the schools. This was clearly done for the educational benefit of the children and the convenience of the parties. If the father was to move out of South Florida, the intent was that the children would reside with the mother and the father would pay support. It was a self-executing clause, as evidenced further by paragraph 3 of the agreement. "It is the agreement of the parties that the care, health, education and future of their children is primary among their concerns, and that the children **remain at the current educational institutions**..." (Emphasis added.) The court will enforce the agreement. Pursuant to the Marital Settlement Agreement, custody of the two minor children shall be with Mrs. Sibley.

This Court also finds that it is in the best interests of the children that custody be with the Former Wife.

The evidence shows that initially the Former Husband was a fine and caring father. Unfortunately, the Former's Husband's relationship with his children from this marriage declined when he remarried. This Court took testimony for several days that showed the difficulties of the relationship of the Former Husband and his older children. The Former Wife has had court ordered primary physical residence of the oldest child, MARGARET HARPER SIBLEY (Maggie), since March 26, 1999. There is no communication between Maggie and the Former Husband. Maggie is in therapy and on medication due to the trauma of the divorce.

Liza, the middle child, was in a private boarding school during the 2001-2002 school year, minutes from the Former Husband's current residence. He did not visit her.

Monty, the youngest child, refuses to speak with his father and refused to be in the same room as his father. The last visitation occurred Christmas time 2000. Monty had to be persuaded by the Guardian ad Litem to get on the airplane. The trip proved to be a disaster. Monty and Liza brought Christmas presents for their father, step-mother and half brother, Sasha. They did not receive any Christmas presents. Mr. Sibley testified that he considered the tickets to fly to see him to be their presents, although he did not tell the children that in advance of their visit. Sasha, Mr. Sibley's son with his current wife, received numerous presents and opened them in the presence of Monty and Liza. Mr. Sibley did not spend any time alone with Monty and Liza. The children were deprived of the individual attention of their father.

Additionally, Monty and Liza slept on the floor. They were expected to baby sit Sasha for part of the visit. Mr. Sibley did not spend any quality time with Monty and Liza. Prior to Mr. Sibley allowing them vacation time, Monty and Liza were forced to sit and write letters to their father to explain what was happening in their lives. This is one of many examples of a lack of meaningful communication. There was no attempt to have a conversation.

After this visit, there has been no contact between Monty and his father. Mr. Sibley testified that he sent Monty a book for his birthday. Monty did not send him a thank you note. As Monty did not behave in an acceptable manner, Mr. Sibley does not wish to contact Monty until he apologizes. Mr. Sibley testified that he was willing to sacrifice his relationship with his son over a principle.

Mr. Sibley's relationship with Liza is also strained. As noted earlier, he did not visit her when she was attending school minutes away. There was testimony that there was a birthday dinner for Sasha, a toddler, with the family china and good silver, and presents, while Liza's birthday, during the same

period was ignored.

There was also testimony that there were two different categories of food in the refrigerator. There was the food that only Mr. Sibley, his new wife and Sasha could eat, and there was the food that Liza and Monty were allowed to eat. This court can not help but think of the Cinderella fairy tale. The overwhelming evidence reveals that these children were emotionally abused by Mr. Sibley.

Mr. Sibley has also failed to make arrangements for the payment of the children's education. Paragraph 6 of the Marital Settlement agreement states "Husband shall be responsible f0f, pay-16r and or arrange to pay for all education expenses of the children while and until they achieve a college degree." The paternal grandfather had historically paid for their education, as he does for most of his other grandchildren. The grandfather testified that he did not want Barbara Sibley to benefit from his paying for the children's education. The education benefits the children, not Barbara Sibley. The children suffer as a result of the hostility directed toward the mother and the failure to fund their educations. Mr. Sibley breached the Marital Settlement Agreement by failing to arrange for the payment of the children's education. He has not only failed to do so, he has interfered with the paternal grandfather's funding of the education.

The evidence and the course of conduct by Mr. Sibley with his children, convinces this Court that in great measure, Mr. Sibley's insistence on being primary residential parent has much more to do with money and the children's trust funds than his love for his children. It has more to do with a punishment of Barbara Sibley than the concern for the best interests of the children. His positions have been inconsistent. In a letter dated June 8, 2000 to Barbara Sibley, (Petitioner's exhibit C), he wrote "As to Liza, what purpose is served by transferring custody of her to you if she is going to be at

Madeira for the next four years anyhow?" On May 9, 2001 he wrote "I continue to object to Liza attending Madeira..." (Respondent's AA2).

Mr. Sibley seeks to use the older children as pawns in the game against Barbara Sibley or in an attempt to relieve himself of the financial obligations pursuant to the Marital Settlement Agreement. His attempt to litigate everything to death is due to Mr. Sibley's disinclination to pay child support and his need to exercise control over his children's lives and material wealth. If it were not so, he would have made the necessary contacts to continue his relationships with his older children, balancing their needs in some fashion, with the needs of his new family. Further evidence of using the children as pawns to avoid payment of child support is his letter to Barbara Sibley stating that he will continue to litigate until he is disbarred or she is bankrupt. This is not the behavior of someone who has the best interests of the children at heart.

Instead, Mr. Sibley has made no effectuate court ordered preconditions to visiting his children. He has not seen his children for approximately 18 months since they returned from a court ordered visitation in January, 2001. Whatever relationship they had prior to his moving away, which was already in disrepair, since the time that he remarried, has been ruptured, perhaps beyond repair. In actuality, Mr. Sibley has not taken any interest in the two minor children's health, education or welfare since he left Florida more than two years ago. His only interest in education is to insist that the children go to public school, so he will not have pay for their education. He has not paid any child support. He has litigated every issue and filed numerous frivolous motions and lawsuits. He has treated these children as objects to be negotiated, rather than children with emotions and needs.

WHEREFORE, IT IS ORDERED AND ADJUDGED that:

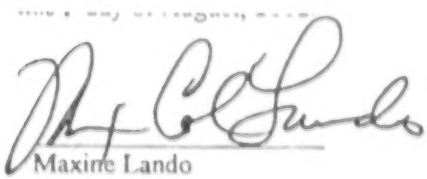
1. The Former Wife's Petition for Modification of Primary Physical Residence, and Designation of Sole Responsibility as to the Minor Children, ELIZABETH MASON SIBLEY and MONTGOMERY BLAIR SIBLEY, JR., and Enforcement of the Final Judgment of Dissolution of Marriage is hereby GRANTED. The Former Wife shall be the primary residential parent of the children, ELIZABETH MASON SIBLEY and MONTGOMERY BLAIR SIBLEY, JR.

2. The Former Wife, BARBARA SIBLEY, shall have sole parental responsibility of the minor children, as sole parental responsibility is in the minor children's best interest. The Former Wife shall continue to inform the Former Husband of all major issues regarding the children's health, education and welfare.

3. The Former Husband owes to the Former Wife the sum of $100,000 ($4,000.00 per month from June, 2000 through June 2002) as arrears for child support pursuant to the parties' Marital Settlement Agreement and Final Judgement. A Final Judgment shall be entered for said arrears. The issue of contempt is addressed by separate order.

4. The Court reserves jurisdiction on the Former Wife's request for attorney's fees and costs.

DONE AND ORDERED in Miami-Dade County, Florida, this 9th day of August, 2002.



Maxine Lando
Circuit Court Judge

Copies furnished to:

Bette Ellen Quiat, Esq.
Montgomery Blair Sibley
Dirk Lorenzen, Esq.

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 03-12824
Non-Argument Calendar

D. C. Docket No. 03-21199-CV-JAL

MONTGOMERY BLAIR SIBLEY,

Plaintiff-Petitioner,

versus

FLORIDA SUPREME COURT, Harry Lee Anstead, in his capacity as Chief Judge and representative, THIRD DISTRICT COURT OF APPEAL, Alan R. Schwartz, in his capacity as Chief Judge and representative, *et al.*,

Defendants-Respondents.

Appeal from the United States District Court for the Southern District of Florida
(October 23, 2003)

Before DUBINA, MARCUS, and WILSON, Circuit Judges.

PER CURIAM:

Montgomery Blair Sibley appeals *pro se* the district court's dismissal for lack of subject matter jurisdiction of his 42

U.S.C. §§ 1981, 1983, 1985(3)[1] and 1988 suit seeking declaratory relief against the Florida Supreme Court, Florida's Third District Court of Appeal, and the11th Judicial Circuit Court in and For Miami-Dade County, Florida. Sibley has also identified Harry Lee Anstead, Alan R. Schwartz, and Maxine Cohen Lando in their capacities as judges of the courts. The district court found that it lacked subject matter jurisdiction due to the availability of an adequate remedy at law. Because we find that the *Rooker-Feldman* doctrine precludes Sibley's claims, we need not decide whether the district court was correct in finding that it lacked subject matter jurisdiction based on the existence of an adequate remedy at law.

Background and Discussion

After a number of adverse decisions rendered in various petitions, motions, and appeals related to disputes over a dissolution of marriage, Sibley filed an action in the district court seeking a declaratory judgment that the judicial system of the State of Florida violated his civil rights. In all, Sibley outlined in his complaint 27 separate claims for relief against three state judges, alleging that he was treated differently by state courts in Florida from others similarly situated, with no rational basis.

The district court found that Sibley's claims numbered 1 through 26 failed to state a claim under § 1983 because they failed to allege cognizable constitutional violations. The court also found that an adequate remedy at law existed for Sibley's

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[1] On appeal, Sibley only discusses his § 1983 claim. We will therefore not consider his other claims. See *Greenbriar, Ltd. v. City of Alabaster*, 881 F.2d 1570, 1573 n.6 (11th Cir. 1989) (issues not argued on appeal are deemed abandoned).

claims against defendants Schwartz and Lando, because Sibley could appeal the disputed decisions to the Third District Court of Appeal or the Florida Supreme Court. Likewise, the district court found that Sibley had an adequate remedy at law for claim 27 as to Lando, because the decision could be appealed. The court then *sua sponte* dismissed the suit pursuant to FED. R. Civ. P. 12(h)(3).

We review a district court's finding that it lacks subject matter jurisdiction de novo. *See Dale v. Moore*, 121 F.3d 624, 626 (11th Cir. 1997). It is well settled that a federal district court lacks jurisdiction to review, reverse, or invalidate a final state court decision. See *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923); *D. C. Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983).

Under the *Rooker-Feldman* doctrine, the authority to review final decisions from the highest court of the state is reserved to the Supreme Court of the United States. See *Hollins v. Wessel*, 819 F.2d 1073, 1074 (11th Cir. 1987) (per curiam). Federal district courts may not exercise jurisdiction to decide federal issues which are inextricably intertwined with a state court's judgment. *See Blue Cross & Blue Shield of Maryland, Inc. v. Weiner*, 868 F.2d 1550, 1554 (11th Cir. 1989). A district court engages in impermissible appellate review when it entertains a claim that the litigants did not argue in the state court, but is inextricably intertwined with the state court judgment. *See Feldman*, 460 U.S. at 483 n.16. The *Rooker-Feldman* doctrine applies as long as the party had a reasonable opportunity to raise his federal claims in the state court proceedings. *See Wood v. Orange County*, 715 F.2d 1543, 1547 (11th Cir. 1983).

We need not recite all of Sibley's 27 claims here; in each of his claims, he alleges that either the courts or one of the individual judges violated his rights by treating him differently than others similarly situated. Most notably, in his reply brief,

he clarifies that he seeks injunctive relief requiring that the state trial judge 1) grant him a hearing; 2) rule upon pending motions; 3) not hold Sibley in contempt; and 4) not revoke his travel privileges. Such action by a federal district court would amount to inappropriate review of state court decisions, particularly in light of the well settled principle that a plaintiff may not seek reversal of a state court judgment simply by casting his complaint in the form of a civil rights action. *See Sawyer v. Overton*, 595 F.2d 252, 252 (5th Cir. 1979) (per curiam).[2]

Further, Sibley had a reasonable opportunity to make any equal protection claims while litigating in the state court system. As brought in his federal suit, any such claims are "inextricably intertwined" with the state court proceedings, because such claims would only succeed to the extent that the state court wrongly decided the issues before it. *See Goodman v. Sipos*, 259 F.3d 1327, 1332 (11th Cir. 1997). All of the state court decisions disputed by Sibley could be appealed to the Florida Supreme Court, and then to the United States Supreme Court.

Because it is clear that the *Rooker-Feldman* doctrine forbids Sibley from bringing the current case, we affirm the district court's dismissal of Sibley's complaint.

Sanctions

The Third District Court of Appeal also seeks sanctions for Sibley's "ongoing filing of facially insufficient pleadings."

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[2] In *Bonner v. City of Pritchard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), we adopted as binding precedent all decisions of the former Fifth Circuit prior to the close of business on September 30, 1981.

The Federal Rules of Appellate Procedure provide that, following determination that an appeal is frivolous, we may, "after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages or single or double costs to the Respondent." FED. R. APP. P. 38.

Respondent's "recommendation" for sanctions came only in a short paragraph at the end of the conclusion of its Answer Brief In the absence of a separate, duly filed motion for sanctions pursuant to Rule 38, we cannot consider Respondent's request.

AFFIRMED.

IN THE DISTRICT COURT OF APPEAL OP FLORIDA
THIRD DISTRICT

JULY TERM, A.D. 2003
DECEMBER 23, 2002
CASE NO.: 3D02-2308
LOWER TRIBUNAL NO. 94-18177

MONTGOMERY BLAIR SIBLEY,
Appellant,

v.

BARBARA SIBLEY,
Appellee.
_____/

Opinion filed December 3, 2003.

An Appeal from the Circuit Court for Dade County, Maxine Cohen Lando, Judge.

Montgomery Blair Sibley, in proper person.
Jay M. Levy; Bette Ellen Quiat, for appellee.
Caruana & Lorenzen and Dirk Lorenzen, for children.

Before COPE, LEVY, and SHEVIN, JJ.

PER CURIAM.

Affirmed.

IN THE DISTRICT COURT OF APPEAL OP FLORIDA
THIRD DISTRICT

JANUARY TERM, A.D. 2004
FEBRUARY 12, 2004
CASE NO.: 3D02-2308
LOWER TRIBUNAL NO. 94-18177

MONTGOMERY BLAIR SIBLEY,
Appellant,

v.

BARBARA SIBLEY,
Appellee.
_____/

The Appellant's motions for rehearing, clarification, and request for written decision are denied. LEVY and SHEVIN, JJ., concur.

COPE, J., concurs in part, dissents in part, and states: While I am convinced that our previously-issued affirmance is correct based on the law and the facts of the case, in the exercise of discretion I would grant the motion for a written opinion, and dissent from the majority's denial of that motion. Apart from that, I concur in the denial of rehearing and clarification.

Appellant's motion for rehearing en banc is denied.

cc:
Montgomery Blair Sibley
Jay M. Levy
Dirk Lorenzen
Bette Ellen Quiat

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 03-14915
Non-Argument Calendar
D.C. Docket No. 03-21885-CV-PC

MONTGOMERY BLAIR SIBLEY,
a father representing a minor,
Alexander Blair Sibley,

Plaintiff-Appellant,

versus

MAXINE COHEN LANDO, in her
capacity as a Judge of the Circuit
Court of the 11`" Judicial District in
and for Miami-Dade County, Florida,

Defendant-Appellee.

/

Appeal from the United States District Court for
the Southern District of Florida
(February 20, 2004)

Before TJOFLAT, ANDERSON and WILSON, Circuit Judges.

PER CURIAM:

Montgomery Blair Sibley ("Plaintiff"), on behalf of his son Alexander Sibley ("Sibley"), filed a civil suit against the Hon. Maxine Cohen Lando, Judge of the Circuit Court of the 11 Judicial Circuit in and for Miami-Dade County, Florida

("Defendant"). Plaintiff argued that Defendant's child support orders against him, and her application of Fla. Stat. § 61.30(12),[1] violated his rights under the Fifth Amendment's due process clause, the Fourteenth Amendment's equal protection clause, provisions of the Florida Constitution, and Florida laws. In particular, Plaintiff argued that Defendant's orders illegally required him to pay more than his annual income in child support to the children of his previous marriage, which left him without funds to support Sibley, the offspring of his second marriage. During a hearing on Defendant's motion to dismiss the complaint, Plaintiff requested permission to amend his complaint in order to more specifically allege an overall constitutional challenge against Fla. Stat. § 61.30(12).

In a comprehensive order entered September 23, 2003, Record, Vol. 1 at 9, the district court concluded that, "under both the *Rooker-Feldman* and *Younger* abstention doctrines ... it would be inappropriate to exercise any subject matter jurisdiction that it may have over Plaintiff's federal claims asserted in this case." The court therefore granted Defendant's motion to dismiss and denied Plaintiff leave to amend. Plaintiff now appeals.

We conclude that the *Younger* doctrine required the district court to abstain for the reasons the court expressed in

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[1]Section 61.30(12) of the Florida Statutes provides that a court may consider the existence of other children who were born after a child support obligation arose when determining whether to grant an upward modification of a child support award. Fla. Stat. § 61.30(12)(a). However, the existence of subsequent children "may only be raised in a proceeding for an upward modification of an existing award and may not be applied to justify a decrease in an existing award." Id. at § 61.30(12)(c).

its September 23 order. Plaintiff contends that the court abused its discretion in denying him leave to amend his complaint. We find no abuse of discretion; an amendment would be futile. AFFIRMED.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED

U.S. Constitution, Fourteenth Amendment, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Constitution, Article. VI, Clause 2:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Florida Statute, §61.16

(1) The court may from time to time, after considering the financial resources of both parties, order a party to pay a reasonable amount for attorney's fees, suit money, and the cost to the other party of maintaining or defending any proceeding under this chapter, including enforcement and modification proceedings and appeals.

Florida Statute §61.30(12)

(12)(a) A parent with a support obligation may have other children living with him or her who were born or adopted after

the support obligation arose. If such subsequent children exist, the court, when considering an upward modification of an existing award, may disregard the income from secondary employment obtained in addition to the parent's primary employment if the court determines that the employment was obtained primarily to support the subsequent children.

(b) Except as provided in paragraph (a), the existence of such subsequent children should not as a general rule be considered by the court as a basis for disregarding the amount provided in the guidelines. The parent with a support obligation for subsequent children may raise the existence of such subsequent children as a justification for deviation from the guidelines. However, if the existence of such subsequent children is raised, the income of the other parent of the subsequent children shall be considered by the court in determining whether or not there is a basis for deviation from the guideline amount.

(c) The issue of subsequent children under paragraph (a) or paragraph (b) may only be raised in a proceeding for an upward modification of an existing award and may not be applied to justify a decrease in an existing award.

Rule 14(g)(i) Statement

The method or manner of raising the federal questions and the way in which they were passed on by the courts with a summary of the pertinent quotations of specific portions of the record with specific reference to the places in the record where the matter appears for each of the points raised in the "reasons for granting the writ" section of the petition. References to the page number are to points as they are found in the petition.

I. The Florida Family Court Proceedings Violated Father's Procedural Due Process Guarantees 5

The due process was initially raised in *Sibley v. Sibley*, Case Number 3D02-102, at page 6 of his initial brief on appeal of the interlocutory order appeal set out in at *Appendix-11*. There the Third District Court of Appeal refused to address the issue. Again, Father raised this issue in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 16 of his initial brief on appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Last, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised these issues which motion was denied *per curiam* without written decision on February 12, 2004, set out at *Appendix-34*.

A. Delay in Conducting Change in Custody Proceedings Violates Due Process . . . 6

Father's "Motion for Contempt and Enforcement and to Modify Visitation Schedule" was filed on September 1, 2000. ("Father's Motion to Modify Visitation") (R-77)[2] and was never ruled upon. Subsequently, in *Sibley v. Sibley*, 3D00-2492 filed on September 6, 2000, Father sought (i) for entry of a writ of prohibition restraining the Honorable Maxine Cohen Lando, Circuit Court Judge of the 11th Judicial Circuit in and for Miami-Dade County, Florida, from presiding as a circuit judge in the case, (ii) entry of a writ of mandamus directing that the Father's minor children be returned to him pending resolution of the pending motions regarding primary residential custody of those children and (iii) entry of a writ of mandamus directing that a full evidentiary hearing be promptly held on the pending motions for residential custody and contempt specifically raising the due process rights of Father. The Third District Court of Appeal denied the petition *per curiam* without

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[2] References to (R-#) refer to the record on appeal prepared in Third District Court of Appeal Case Number 3D02-2308.

opinion which, under that court's holding in *Obanion v. State*, 496 So.2d 977, 980 (Fla. 3rd DCA 1986), *rev. denied*, 504 So.2d 769 (Fla. 1987), was "a denial of a petition for a writ of prohibition will, in fact, be a ruling on the merits, unless otherwise indicated." Subsequently, Father raised this issue in *Sibley v. Sibley*, 3D01-1358 on June 28, 2001 in a mandamus petition which sought the same relief as 3D00-2492, *supra*, as 11 months had transpired since Judge Lando's *de facto* termination of Father's right as primary residential custodian without a hearing or order. The Third District Court of Appeal denied the petition *per curiam* without opinion as before. Thereafter, Father raised this issue in *Sibley v. Sibley*, Case Number: 3D02-102, at pages 6-11 of his initial brief on appeal of the interlocutory order appeal set out in at *Appendix-11*. There the Third District Court of Appeal refused to address the issue. Again, Father raised this issue in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 29-31 of his initial brief on appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Last, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised these issues which motion was denied *per curiam* without written decision on February 12, 2004, set out at *Appendix-34*.

B. Judge Lando Improperly Limited Father's Presentation of Evidence . . 8

Oral objection denied by Judge Lando as to limitations on Father's presentation of evidence in his case-in-chief made by Father at time of hearing. (RII-October 8, 2001 Transcript, pp. 909-911). Additionally, Judge Lando silenced Father and denied him the ability even to proffer his objections to preserve them for appellate review. (R-II, April 30, 2001 Transcript, page 6; September 24, 2001Transcript, pp. 341-460; September 25, 2001 Transcript, p. 648; June 4, 2002 Transcript, pp. 8, 22, 27, 88-89; June 5, 2002 Transcript, pp. 114-127, 142, 145; July 1,

2002 Transcript, pp. 18-19). These issues were raised on appeal in Father's initial brief at pages 20-21 in *Sibley v. Sibley*, Case Number 3D02-2308, which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Last, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised these issues which motion was denied *per curiam* without written decision on February 12, 2004, set out at *Appendix-34*.

C. Judge Lando Abdicated Her Responsibility By Her Verbatim Entry of the Proposed Orders from Mother's Counsel 8

This issue was first raised by Father raised by a motion to strike filed December 18, 2001, the proposed order based upon the alleged *ex parte* communication between Bette Quiat and Judge Lando which resulted in the *verbatim* adoption of Ms. Quiat's proposed order (R-126) which motion was ultimately denied 18 months later. (R-879). Judge Lando refused to set a hearing on this significant issue. (R1-Appendix, page 1, 12/18/01 entry). Thereafter, in *Sibley v. Sibley*, Case Number: 3D02-102, at pages 15-18 of his initial brief on appeal of the interlocutory order appeal set out in at *Appendix-11*. There the Third District Court of Appeal refused to address the issue. Again, Father raised this issue in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 31-33 of his initial brief on appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Last, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised these issues which motion was denied *per curiam* without written decision on February 12, 2004, set out at *Appendix-34*.

D. Judge Lando's Termination of Father's Parental Rights Violated Father's

Fundamental and Due Process Rights 9

This issue was raised in *Sibley v. Sibley*, Case Number: 3D02-102, at page 25 of Father's initial brief on appeal of the interlocutory order appeal set out in at *Appendix-11*. There the Third District Court of Appeal refused to address the issue. Again, Father raised this issue in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 33-36 of his initial brief on appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Last, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised these issues which motion was denied *per curiam* without written decision on February 12, 2004, set out at *Appendix-34*.

E. Lack of Notice to Father of the Expansion of the Hearings Beyond the July 27, 2000 Allegations Violated Father's Due Process Rights **10**

This issue was initially raised at the time of the hearing on September 24, 2001 by Father by oral objection which was denied. (September 24, 2001 Transcript, pp. 343-344; (September 24, 2001 Transcript, pp. 341-460, September 25, 2001 Transcript, p. 648). Thereafter, the issue was raised in *Sibley v. Sibley*, Case Number: 3D02-102, at pages 13-15 of Father's initial brief on appeal of the interlocutory order appeal set out in at *Appendix-11*. There the Third District Court of Appeal refused to address the issue. Again, Father raised this issue in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 23-26 of his initial brief on appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Last, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised this issue which motion was denied *per curiam* without written decision on February 12, 2004, set out

at *Appendix-34*.

F. Judge Lando Utilized Stale Evidence Which Caused Her To Mis-Recollect the Testimony **12**

Father initially raised this issue by oral objection which was denied by Judge Lando. (June 4, 2002 Transcript, p. 45). Father raised this issue in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 18-20 of his initial brief on appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Last, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised this issues which motion was denied *per curiam* without written decision on February 12, 2004, set out at *Appendix-34*.

G. The Bias of Judge Lando Against Father Violated Father's Due Process Rights **12**

Father initially raised these issues by motions to disqualify of December 15, 2000 (R-159), May 4, 2001 (R-264), October 24, 2001 (R-418), June 14, 2002 (R-744), July 15, 2002 (R-811), July 31, 2002 (R-688) which were all denied and the failure to rule on Father's motion to disqualify filed August 20, 2002, which has never been ruled upon. (R-882). Thereafter, these matters as of December 10, 2001, were raised in *Sibley v. Sibley*, Case Number: 3D02-102, at pages 21-22 of Father's initial brief on appeal of the interlocutory order appeal set out in at *Appendix-11*. There the Third District Court of Appeal refused to address the issue. Father also sought petitions for writs of prohibition against Judge Lando for each of the motions to disqualify her which petitions were denied *per curiam* without opinion as reported at *Sibley v. Sibley*, 814 So.2d 1054 (Fla. 3d DCA 2002)(table); *Sibley v. Sibley*, 793 So.2d 959 (Fla. 3d DCA 2001)(table); *Sibley v. Sibley*, 803

So.2d 738 (Fla. 3d DCA 2001)(table); *Sibley v. Sibley*, 795 So.2d 71 (Fla. 3d DCA 2001)(table); *Sibley v. Sibley*, 791 So.2d 481 (Fla. 3d DCA 2001)(table); *Sibley v. Sibley*, 771 So.2d 1175 (Fla. 3d DCA 2000)(table); *Sibley v. Sibley*, 751 So.2d 586 (Fla. 3d DCA 2000)(table). Also, Father raised these issues in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 26-28 of his initial brief on appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Last, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised these issues which motion was denied *per curiam* without written decision on February 12, 2004.

H. Florida Public Policy Requires Attorney Fees and Costs To Be Borne By Mother 14

Father initially raised this issue by motion dated October 31, 2001. (R-428) Judge Lando, through her administrative assistant, advised Father Judge Lando would not consider such matters before August 2002. (R-688). Significantly, though asked to do so, Judge Lando in December 2001 refused to enter a submitted agreed-by-counsel-as-to-form order stating her intention to not consider the matter of attorney fees and costs for 9 months. (R-688). On September 9, 2002, Father again moved for pendente lite appellate attorney fees and costs before Judge Lando. Again, Judge Lando refused to set this motion for hearing and has not otherwise ruled upon it. Father thereafter moved for appellate attorney fees and costs on January 14, 2002 in Case 3D02-102 which motion was denied on January 17, 2002, *per curiam* without written decision. Also, Father raised this issue in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 36-37 of his initial brief on appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Last, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised these issues

which motion was denied *per curiam* without written decision on February 12, 2004.

II. The Florida Family Court Proceedings Violated Father's Substantive Due Process Guarantees 15

Father initially raised this issue in *Sibley v. Sibley*, Case Number: 3D02-102, at pages 22-25 of Father's initial brief on appeal of the interlocutory order appeal set out in at *Appendix-11*. There the Third District Court of Appeal refused to address the issue. Again, Father raised this issue in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 47-60 of his initial brief on appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Last, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised this issue which motion was denied *per curiam* without written decision on February 12, 2004, set out at *Appendix-34*.

III. Father's Support Obligation Offends Equal Protection 17

Father initially raised this issue in his Supplemental Petition for Modification Of Child Support filed on August 4, 2001, claiming that Father "has fathered another child who must be accorded equal protection under the laws and constitution of the State of Florida and the U.S. Constitution to a proportionate share of Respondent's financial obligations". (R-1062). That motion was denied without explanation by Judge Lando. (R-1022, p. 5, ¶5; *Appendix-25*). Father raised this issue in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 64-65 of his initial brief on appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Last, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised this issue which motion was

denied *per curiam* without written decision on February 12, 2004, set out at *Appendix-34*.

IV. Father's Support Obligations Violate Due Process 20

Father initially raised this issue in his Supplemental Petition for Modification Of Child Support filed on August 4, 2001. (R-1062). That motion was denied without explanation by Judge Lando. (R-1022, p. 5, ¶5; *Appendix-25*). Father raised this issue in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 60-76 of his initial brief on appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Last, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised this issue which motion was denied *per curiam* without written decision on February 12, 2004, set out at *Appendix-34*.

V. Father was Improperly Prohibited From Suing in Other Courts and Was Improperly Sanctioned 22

Father initially raised the first issue of being barred from suing in other courts by Judge Lando's (R-295) in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 41-42 of his initial brief on appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Again, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised this issue which motion was denied *per curiam* without written decision on February 12, 2004, set out at *Appendix-34*.

Father initially raised the issue of being sanctioned for failing to appear for a hearing (R-554; R-589) in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 43-44 of his initial brief on

appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Again, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised this issue which motion was denied *per curiam* without written decision on February 12, 2004, set out at *Appendix-34*.

VI. The Florida Supreme Court and the Third District Court of Appeals Violated Father's Equal Protection Rights 23

Father raised this issue of the denial of equal protection by the entry of *per curiam* decisions without written explanation in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, stating at pages 4-5 of the motion that "by entering a *per curiam* affirmance without written opinion, this panel violates Father's Equal Protection guarantees contained in both the Florida and Federal Constitutions." A full detail of the various violations were set out in the remaining 150 pages of the motion. That motion was denied *per curiam* without written decision on February 12, 2004, set out at *Appendix-34*.